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August 22, 2014

Hon. Pamela K. Chen
United States District Court Judge
225 Cadman Plaza East
Courtroom: 4F
Brooklyn New York 11201
Re: Gorfinkel v. Vayntrub Case# 13-cv-3093(PKC) (AKT)

**Compliance with 8/20/14 order of Judge Chen to file Opposition to Rule 12(b)(6) Motion to
Dismiss Within Ten (10) days of that date**

Dear Judge Chen:

Background

With reference to your August 20, 2014 Order (Doc. #54) to Plaintiff's counsel to file the Opposition ECF within Ten (10) days of August 20, 2014 it has been done and is attached.

Discussion

(A) Plaintiff Previously Timely Complied with 7/02/13 Court Briefing Schedule The attention of the court is respectfully directed to the Docket numbers at the top of the Opposition to the Defendants' Motion to Dismiss, All opposition documents were previously ECF filed on August 22, 2013 as directed by Your Honor's Briefing Schedule ECF on 7/02/13 Also on August 23, 2013 counsel sent by federal express two courtesy copies of all Opposition ECF filed on August 22, 2014. See Arthur Morrison letter to Judge Chen Docket Entry 28-1 Exhibit "A" This mailing complied with your Chamber's Individual Rule 1(d) The Briefing Order is as follows:

"Defendants shall serve the motion upon Plaintiff on or before August 1, 2013; Plaintiff shall serve upon Defendants its opposition on or before August 22, 2013; and Defendants shall file the reply, if any, and the Parties shall submit to the Court the fully briefed motion papers on or before August 29, 2013. Ordered by Judge Pamela K. Chen on 7/2/2013. (Doerr, Mark) (Entered: 07/02/2013)" (Docket Entry 7/02/13)

Were Your Honor to review the Court Docket for this case for Dockets 23, 24, 25, 26 and 27 for August 22, 2013 and Docket 28-1 providing courtesy copies, you will observe total compliance by plaintiff with ECF filing requirements of both Chambers and EDNY.

(B) Defendants did not ECF File Its Rule 12(b)(6) Motion on 8/01/13

It is the defendants who did not ECF the Rule 12(b) (6) motion on August 1, 2013 as directed by the Court's Briefing Scheduling Order on July 2, 2013. On 11/13/13 (Doc. #35) when late ECF filed, it contained reference to the 7/02/13 Briefing Order and receipt of opposition by 8/22/13

Extensions were sought and granted the defendants for ECF filing of the Reply (Docket#33 10/21/13) but the Docket does not demonstrate the original Notice of Motion to Dismiss under Rule 12(b)(6) was ever ECF filed on August 1, 2013 to comply with the July 2, 2013 Order. ECF Filing of the Reply occurred on 11/13/13 (Doc. #36)

Conclusion

It is the defendants who did not comply with the July 2, 2013 Briefing Scheduling Order by not ECF filing its Rule 12(b) (6) motion on August 1, 2013. Motion-in-Chief is dated that day but not ECF filed on August 1, 2013. Entry #35 is ECF filed 10 weeks later.

As documented by the full Docket in this case plaintiff did what it was required to do upon receipt by mail only (not EC F) of the Rule 12(b) (6) motion; the plaintiff timely responded and ECF filed the Opposition under Docket Numbers 23, 24, 25, 26 27. Also two hard copies sent to Chambers the next day. Plaintiff was timely and in full compliance with your Honor's July 2, 2013 Order with her ECF filing back on August 22, 2013 and hard copies being delivered by Federal Express.

The client at this point has read Your Honor's Order of August 20, 2014 which concludes the Court Order of July 2, 2013 was not complied with by her counsel to the extent of non ECF filing (only mailing to Chambers) when earlier docket entries under case #13-cv-3093 demonstrate full 8/22/13 compliance with ECF fling requirements Docket entries 23, 24, 25, 26, 27. The client also expressed to counsel as late as today, August 22nd at 4pm that the deadline was missed if the Judge said so in writing on August 20th (Docket #45) including sanctions; she believes her case has been severely compromised by the Judge's Footnote #5 and other conditions imposed therein because of a finding of a missed ECF filing deadline on the part of her counsel although the documentary evidence in the Docket shows otherwise, compliance.

Your Honor is respectfully requested to review the documentary evidence contained in the Court Docket, copies of which are again attached hereto and consider the fact that the Court's July 2, 2013 Briefing Schedule Order to ECF file the Opposition by August 22, 2013 was fully complied with.

Respectfully submitted,
/s/ Arthur Morrison
ARTHUR MORRISON

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